

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

MARK GRAFEMAN

Respondent

v.

DIRECTOR OF REVENUE

Appellant

DOCKET NUMBER **WD72551**

DATE: June 7, 2011

Appeal From:

Circuit Court of Miller County, MO
The Honorable Kenneth L. Oswald, Judge

Appellate Judges:

Division One
Mark D. Pfeiffer, P.J., Thomas H. Newton, and Alok Ahuja, JJ.

Attorneys:

Trevor Bossert, Jefferson City, MO

Counsel for Appellant

Attorneys:

Carl M. Ward, Washington, MO

Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

MARK GRAFEMAN, Respondent, v.
DIRECTOR OF REVENUE, Appellant

WD72551

Miller County

Before Division One Judges: Pfeiffer, P.J., Newton, and Ahuja, JJ.

Grafeman was arrested for driving while intoxicated. Subsequent breathalyzer test results confirmed his blood alcohol content was over the limit. The Director of Revenue suspended his license, which Grafeman challenged. At the hearing, the Director of Revenue proffered the test results and the accompanying breathalyzer maintenance report. Grafeman objected to the admission of the evidence on the ground that the permits of the breathalyzer operator and maintenance technician were invalid. He claimed the permits were invalid because they were issued by DHSS, which no longer had the authority to issue permits based on an executive order. The trial court agreed that the permits were invalid and excluded the documents. Consequently, the Director of Revenue could not meet its burden of proof, and the trial court reinstated Grafeman's driver's license. The Director of Revenue appeals.

REVERSED AND REMANDED.

Division One Holds:

The Director argues that the trial court erred in reading the executive order to have automatically transferred the operation of the Breath Alcohol Program (BAP) from DHSS to MoDOT on the order's effective date, thereby divesting DHSS of all authority, power, and duties to administer BAP. Relying on recent precedent, we find the executive order only authorized the process of the transfer, which the agencies did not implement. Consequently, DHSS still had the authority to issue permits and perform other administrative functions for BAP. The trial court erred in its declaration and application of the law when it determined that the officers' permits were invalid because DHSS had issued them. The permits were valid, and barring any other evidentiary defects, the maintenance report and test results would be admissible. The trial court abused its discretion in excluding the documents. Therefore, we reverse and remand for a new trial.

Opinion by Thomas H. Newton, Judge

June 7, 2011

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